

REMARKS

Claims 1-4 are pending in the present application.

Information Disclosure Statement

Regarding Yamamura et al., Journal of Materials Research, Vol. 17, No. 6, pages 1329-1334, June 2002, the Examiner alleged as follows:

Following non-patent literature was filed 26 November 2009, but is not a proper information disclosure statement.

“Hydrogen Absorption of Nanoscale Pd Particles Embedded in ZrO₂ Matrix Prepared from Zr-Pd Amorphous Alloys”, Yamamura et al., Journal of Materials Research, Vol. 17, No. 6, pages 1329-1334, June 2002.

37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP §609.04(a) states, “the list may incorporated into the specification but must be submitted in a separate paper.” Therefore, this non-patent literature is cited by the examiner on form PTO-892 as it has considered.

However, as discussed below, Yamamura et al. is not a prior art reference, therefore, it is not material to the patentability of the present application.

Rejections under 35 USC §102(b)

Claims 1 and 2 were rejected under 35 USC §102(b) as being anticipated by “Hydrogen Absorption of Nanoscale Pd Particles Embedded in ZrO₂ Matrix Prepared from Zr-Pd Amorphous Alloys”, Yamamura et al., (Yamamura et al., Journal of Materials Research, Vol. 17, No. 6, pages 1329-1334, June 2002).

Although the Examiner alleges that Yamamura et al. is a §102(b) prior art reference, the allegation is not correct. The present application is a national stage of PCT international application, which was filed on April 7, 2003, which is the US filing date of the present application. The 35 U.S.C. 363 provides as follows:

35 USC §363 International application designating the United States:
Effect.

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

Thus, the filing date of the present application in the United States is April 7, 2003 for the §102(b) purpose. Yamamura et al. was published in June, 2002, which is NOT more than one year prior to the “date of the application for patent in the United States.”

For at least these reasons, Yamamura et al. does not meet the requirements of the prior art provided in 35 USC §102(b). Thus, the 35 USC §102(b) is improper and should be withdrawn.

Moreover, Applicants of the present application are included in the authors of Yamamura et al. Applicants submitted two declarations under 37 C.F.R. § 1.132 together with the previous response. One of the declaration shows that the cited disclosure in Yamamura et al. was conceived or invented by the present inventors and that the inventorship of this application is correct in that the reference discloses subject matter derived from the inventors.

Therefore, Yamamura et al. is not 35 USC §102(a) prior art because §102(a) requires the invention was "patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent," i.e., the author of the printed publication must be other person(s).

Thus, Yamamura et al. does not qualify as the prior art provided in 35 USC §102.

Rejections under 35 USC §103(a)

Claim 2 was rejected under 35 USC §103(a) as being obvious over Yamamura.

Claim 4 was rejected under 35 USC §103(a) as being obvious over Yamamura, and further in view of Baiker et al. (U.S. Patent No. 4,916,109 (Baiker)).

As discussed above, Yamamura et al. does not qualify the prior art provided in 35 USC §102. Thus, the 35 USC §103(a) rejections based on Yamamura et al. and on combination of Yamamura et al. are improper and should be withdrawn.

In view of the aforementioned remarks, Applicants submit that the claims are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

Application No.: 10/552,507
Art Unit: 1793

Response under 37 CFR §1.111
Attorney Docket No.: 053128

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read 'Sadao Kinashi', with a stylized flourish at the end.

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